

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-307-C

| | | |
|---|---|-----------------------------|
| In Re: |) | |
| Application of Sage Spectrum LLC |) | |
| for a Certificate of Public Convenience |) | |
| and Necessity to Provide Resold and |) | SETTLEMENT AGREEMENT |
| Facilities-Based Local Exchange, Access, |) | |
| And Interexchange Telecommunication |) | |
| Services in the State of South Carolina |) | |
| and for Flexible and Alternative |) | |
| Regulation |) | |

This Settlement Agreement ("Settlement Agreement") is made by and among the Office of Regulatory Staff ("ORS") and Sage Spectrum, LLC ("Sage Spectrum" or "the Company") (collectively referred to as the "Parties" or sometimes individually as "Party");

WHEREAS, on August 7, 2008, Sage Spectrum filed its Application requesting: (i) a Certificate of Public Convenience and Necessity be granted authorizing the Company to provide resold and facilities-based local exchange, access and interexchange telecommunications services throughout the State of South Carolina; (ii) alternative regulation of its interexchange business services, consumer card services, operator services, and private line service offerings consistent with Orders 95-1734 and 96-55 in Docket No. 96-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C; (iii) flexible regulation for its local exchange telecommunications services consistent with Order No. 98-165 in Docket No. 97-467-C; (iv) waiver of certain regulations of the Public Service Commission of South Carolina ("Commission"), specifically Regulation 103-610 regarding location of records, Regulation 103-

631 concerning publishing and distributing local exchange directories, and Regulation 103-612.2.3 regarding the filing of operating maps; and (v) a waiver of any requirement to maintain financial records in conformance with the Uniform System of Accounts (“USOA”);

WHEREAS, on August 12, 2008, counsel for ORS entered a Notice of Appearance in this matter;

WHEREAS, on August 13, 2008, the Commission issued its Order No. 2008-583 by which the Commission appointed David Butler, Esquire as the Hearing Examiner in this matter;

WHEREAS on August 15, 2008, the Commission issued a Notice of Filing and Hearing and established a return date of September 15, 2008, for the filing of letters of protest or petitions to intervene and established a hearing date of November 3, 2008 for the application to be heard before a hearing examiner;

WHEREAS, on September 19, 2008, the Commission issued its Order No. 2008-646 by which it subsequently appointed B. Randall Dong, Esquire as the Hearing Examiner in this matter;

WHEREAS, on September 19, 2008, the Company pre-filed the direct testimony of Andrew Karl with the Commission;

WHEREAS, the purpose of this proceeding is to review the application filed by the Company and its requests: (i) for a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange, access, and interexchange telecommunications services within the State of South Carolina; (ii) for alternative regulation of its interexchange business services, consumer card services, operator services, and private line service offerings consistent with Orders 95-1734 and 96-55 in Docket No. 96-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C; (iii) for flexible regulation for its local exchange

telecommunications services consistent with Order No. 98-165 in Docket No. 97-467-C; (iv) for waiver of certain of the Commission Regulations, specifically Regulation 103-610 regarding location of records, Regulation 103-631 concerning publishing and distributing local exchange directories, and Regulation 103-612.2.3 regarding the filing of operating maps; and (v) for waiver of any requirement to maintain financial records in conformance with the USOA;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical, managerial, and financial expertise of the Company to provide the services requested in the Application;

WHEREAS, ORS has reviewed the Application and the financial data provided by the Company, and ORS has calculated certain performance ratios based upon information provided by the Company;

WHEREAS, ORS has investigated the services to be offered by the Company and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs submitted by the Company;

WHEREAS, ORS has reviewed the prefiled testimony of Andrew Karl;

WHEREAS, as a result of its investigations, ORS has determined: (a) the Company intends to offer resold and facilities-based local, access, and long-distance telecommunications services such as residential and business local exchange services, switched outbound ("1 +" dialing), toll-free service, directory assistance services, and operator services; (b) the Company's officers possess sufficient technical and managerial abilities to adequately provide the services applied for; (c) based upon the information provided and the analysis performed, the Company appears to have access to sufficient financial resources necessary to provide the services proposed in its application; (d) the Company's proposed tariffs with the amendments as agreed to

in this Settlement Agreement comply with Commission statutes and regulations; (e) the services provided by the Company will meet the service standards required by the Commission; (f) the provision of services by the Company will not adversely impact the availability of affordable telecommunications services; (g) to the extent it is required to do so by the Commission, the Company will participate in the support of universally available telephone service at affordable rates; and (h) the provision of interexchange services by the Company will not adversely impact the public interest;

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket;

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

- 1) The Parties agree that Sage Spectrum's Application and exhibits to the Application are incorporated into this Settlement Agreement and made a part hereof;
- 2) The Parties agree to stipulate into the record before the Commission this Settlement Agreement. The Parties also agree to stipulate to the pre-filed testimony of the Company's witness Andrew Karl without cross-examination by ORS;
- 3) The Company has submitted financial data, which was provided as Exhibit D to its Application and which was granted Protective Treatment by Commission Hearing Examiner Directive dated August 15, 2008, and which financial data is incorporated by reference;
- 4) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange, access, and interexchange telecommunications services within the state of South Carolina;

5) The Company has requested a waiver of 26 S.C. Code Ann. Regs. 103-610 concerning the location of books and records. However, S.C. Code Ann. §58-9-380 (Supp. 2007) provides that:

Each telephone utility shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in such office all such books, accounts, papers and records as shall reasonably be required by the Office of Regulatory Staff. No books, accounts, papers or records required by the ORS to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

ORS is agreeable to allowing the Company to maintain its books and records outside of the State of South Carolina in exchange for the Company agreeing to provide access to its books and records. ORS is agreeable to the Company maintaining its books and records at its principal offices in the State of Texas, and the Company agrees to notify the ORS of any change in the location of the principal office or in the location where the books and records are maintained. This provision of the Settlement Agreement shall not be construed as a waiver by ORS of S.C. Code Ann. § 58-4-55 (Supp. 2007) or § 58-9-1070 (Supp. 2007). ORS expressly reserves its rights to require the production of books, records and other information located within or outside of the State of South Carolina in order to carry out its duties and compliance with any state or federal regulation;

6) ORS does not oppose the Company's request for waiver of 26 S.C. Code Ann. Regs. 103-631 which requires the publication and distribution of directories, and Sage Spectrum agrees to make arrangements with publishers of local directories in South Carolina to include the names and telephone numbers of Sage Spectrum's subscribers and customers in local directories, unless a subscriber indicates his/her desire for an unpublished telephone number;

7) The Company has requested a waiver of any rule or regulation that might require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (“USOA”). The Company acknowledges that S.C. Code Ann. § 58-9-340 (Supp. 2007) provides that the ORS may, in its discretion and subject to the approval of the Commission, prescribe systems of accounts to be kept by telephone utilities subject to the commission’s jurisdiction and that the ORS may prescribe the manner in which the accounts shall be kept and may require every telephone utility to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the ORS. The Company agrees to keep its books, papers, and records in such a manner that permits ORS to audit its revenues and expenses for compliance with programs such as but not limited to the Universal Service Fund (“USF”), the Interim LEC Fund, dual party relay service fund, and gross receipts. The Company agrees to complete the reporting forms for such programs as but not limited to USF, dual party relay service fund, Interim LEC, and gross receipts as may be required by the ORS of telecommunications companies certificated to operate within South Carolina and as the reporting forms may be amended from time to time;

8) Given the Company’s request to provide statewide service, ORS does not oppose the Company’s request for waiver of 26 S.C. Code Ann. Regs. 103-612.2.3 which requires the filing of operating maps. However, should the Company establish local exchange service areas which differ from those of the incumbent local exchange carriers, the Company agrees it will notify the Commission and ORS of the change and file updated service maps;

9) ORS does not oppose the Company’s requests: (a) for flexible regulation for its local telecommunications service offerings consistent with Order No. 98-165 in Docket No. 97-467-C, such flexible regulation including specifically (i) adoption of a competitive rate structure

incorporating maximum rate levels with the flexibility for rate adjustment below the maximum rate levels and (ii) presumptively valid tariff filings upon filing subject to an investigation of such tariff filing being instituted within thirty (30) days and (b) for alternative regulation of its interexchange business services, consumer card services, operator services, and private line service offerings consistent with the procedures described and set forth in Orders 95-1734 and 96-55 in Docket No. 96-661-C as modified by Order No. 2001-997 in Docket No. 2000-407-C, specifically (i) regulation of these services listed above in the same manner as these services are regulated of AT&T Communications of the Southern States, Inc., (ii) removal of the maximum rate tariff requirements for Sage's business services, private line, and customer network-type offerings, except in instances governed by Order No. 2001-997 which reinstituted maximum rates for surcharges and rates associated with certain intrastate operator-assisted calls; (iii) presumptively valid tariff filings for these interexchange services unless an investigation of a particular filing is instituted within seven (7) days, in which case the tariff filing will be suspended until resolution of the investigation or until further order of the Commission; and (iv) grant Sage Spectrum the same treatment as AT&T Communications of the Southern States, Inc. in connection with any future relaxation of reporting requirements;

10) The Company agrees to resell the services only of those local exchange providers or interexchange carriers authorized to do business in South Carolina by the Commission. The Company agrees to notify ORS and the Commission, in writing, of its underlying interexchange carriers and if Sage Spectrum changes its underlying interexchange carriers;

11) The Company agrees that it will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;

12) The Company agrees to file necessary financial information with the Commission and ORS for universal service fund reporting, dual party relay service fund reporting, interim LEC fund reporting, annual reporting, gross receipts reporting, and/or any other reporting which may now or in the future be applicable to telecommunications providers such as Sage Spectrum. The Parties agree that such reports shall be filed pursuant to ORS's instructions and monies shall be remitted in accordance with the directions of the ORS and the Commission.

13) The Company agrees to maintain its books and records in a manner that would permit ORS to examine any of Sage Spectrum's reports filed with the Commission and provided to ORS.

14) The Company agrees to file with the Commission and ORS a completed authorized utility representative forms within thirty (30) days of the Commission's order.

15) In the event the Company offers prepaid calling card services in the future, Sage Spectrum agrees that it shall post a surety bond in the amount of \$5,000 as required by the Commission;

16) In the event that the Company offers local and long distance services to end users, Sage Spectrum agrees to comply with the verification regulations governing change of preferred carriers as established by Federal Communications Commission ("FCC"). In addition, in the event that Sage Spectrum offers local and long distance services to end users, the Company agrees to comply with the marketing practices and guidelines established by the Commission in Order No. 95-658;

17) The Company agrees to comply with South Carolina Code Section § 58-9-300 entitled "Abandonment of Service." Additionally, to the extent applicable, Sage Spectrum agrees to adhere to the FCC's rule 47 C.F.R. § 64.1190 and 64.1130 regarding preferred carrier freezes

and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;

18) To the extent necessary, the Company agrees to engage in good faith negotiations with non-BellSouth incumbent local exchange carriers whose networks interconnect with BellSouth at the same local tandem regarding traffic exchange;

19) The Company agrees to comply with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center," also known as 911 services." At the time the Company offers or provides any service that would implicate Title 23, Chapter 47, the Company agrees to contact the appropriate authorities regarding 911 services in the counties and cities where it will be operating prior to initiating local service in South Carolina and shall provide the 911 coordinator in each county and/or city with information regarding the Company's operations. Attached as Exhibit 1 to this Settlement Agreement is a memorandum from the State 911 Office which provides contact information for the County 911 Coordinators;

20) The Company agrees to comply with all rules and regulations of the Commission unless the Commission has expressly waived such rule or regulation;

21) The Company agrees to file a final revised tariff with both the ORS and the Commission and the revised tariff shall reflect and be in accordance with ORS's recommendations as set forth in the summary attached as Exhibit 2 to this Settlement Agreement.

22) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Settlement Agreement reached among the Parties serves the public interest as defined above;

23) The Parties agree to advocate that the Commission accept and approve this Settlement Agreement in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Settlement Agreement be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Settlement Agreement and the terms and conditions contained herein.

24) The Parties agree that signing this Settlement Agreement will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Settlement Agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement in its entirety without penalty or obligation.

25) This Settlement Agreement shall be interpreted according to South Carolina law.

26) The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Settlement Agreement by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Settlement Agreement. The Parties agree that in the event any Party should fail to indicate its consent to this Settlement Agreement and the terms contained herein, then this Settlement Agreement shall be null and void and will not be binding on any Party.

WE AGREE:

Representing the Office of Regulatory Staff

Shealy Boland Reibold

Shealy Boland Reibold, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
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Telephone: (803) 737-0863
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Email: sreibol@regstaff.sc.gov

10/1/08

Date

WE AGREE:

Representing Sage Spectrum, LLC

Bonnie D. Shealy

Bonnie D. Shealy, Esquire
Robinson, McFadden & Moore, P.C.
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bshealy@robinsonlaw.com

Oct. 1, 2008

Date

STATE OF SOUTH CAROLINA
State Budget and Control Board
OFFICE OF RESEARCH & STATISTICS

EXHIBIT 1

MARK SANFORD, CHAIRMAN
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

RICHARD ECKSTROM
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

ROBERT W. HARRELL, JR.
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

REMBERT C. DENNIS BUILDING
1000 ASSEMBLY STREET, SUITE 425
COLUMBIA, SOUTH CAROLINA 29201

Bobby Bowers
DIRECTOR

August 2, 2004

To: Telephone Companies New to South Carolina

In an effort to continue providing quality emergency services to the citizens of South Carolina, the State 911 Office requests that before beginning telephone services in a county, you contact the 911 Coordinator in that county. This will allow both parties to obtain important information about providing 911 services in that county. If you have already begun services, then contact the coordinator as soon as possible.

A list of County 911 Coordinators can be found on the South Carolina E911 homepage at www.ors.state.sc.us/digital/E-911.ASP. If you have any questions related to 911 in South Carolina, you may contact E911 Coordinations at the Office of Research and Statistics at 803-734-3883. The person responsible for this can also be found on the 911 homepage. Please be aware that some cities may have their own E911 systems, these are also listed on the 911 homepage. These city coordinators will need to be contacted in addition to the county coordinators.

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COLUMBIA, S.C. 29201
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(803) 898-9941

Recommendations for Sage Spectrum's Local Exchange Tariff No. 1

Original Page No. 1—The Company should include a regulatory contact phone number on the title page.

Section 1—Definitions and Abbreviations

--There are no recommendations for Section 1.

Section 2—Rules and Regulations

Original Page No. 26 2.11.2—The Company should modify the third sentence in the paragraph as follows—"This 30 day period will begin upon receipt of notification from the Customer." (SC Reg. 103-624.3 provides that notification may be written or oral)

Section 3—Description of Services

Original Page No. 61 3.1.15—The Company should include a maximum as well as a current rate for the \$25 per line Dual Service Charge.

Section 4—Rates and Charges

--There are no recommendations for Section 4.

Section 5—Maximum Rates

--There are no recommendations for Section 5.

Recommendations for Sage Spectrum's Interexchange Tariff No. 2

Original Page No. 1—The Company should include a regulatory contact phone number on the title page.

Original Page No. 2—The Company should modify the first sentence to reflect 34 tariff pages.

Section 1—Definitions

Original Page No. 8—The Company should correct the spelling for the term "geographic" in the definition for "Exchange".

Section 2-Rules and Regulations

--There are no recommendations for Section 2.

Section 3—Description of Services

Original Page No. 29 3.2.9—The Company should modify the sentence as follows—“Toll Calls are billed in sixty (60) second increments.”

Section 4—Rates and Charges

--There are no recommendations for Section 4.

Section 5—Maximum Rates

Original Page No. 32 5.1—Maximum rates are not necessary for this service if the service provided is exclusive to business. If there are any residential customers, maximum rates are required.

Original Page No. 32 5.2—Maximum rates are not necessary for this service if the service provided is exclusive to business. If there are any residential customers, maximum rates are required.

Original Page No. 32 5.3—A Maximum Rate for the “Business Rate Reconnection Fee” is not required.

Original Page No. 33 5.4—Maximum Rates are not required for Directory Assistance.

Original Page No. 33 5.5—Maximum Rates are not required for Operator Services.

Section 6—Promotions and Discounts

Original Page No. 34—The Company should delete the following sentence from the first paragraph—“Promotions will be filed as separate tariff sheets under this Section 5.”

Recommendations for Sage Spectrum’s Access Tariff No. 3

Original Page No. 1—The Company should include a regulatory contact phone number on the title page.

Section 1 Definition and Abbreviations

--There are no recommendations to Section 1.

Section 2—Rules and Regulations

Original Page No. 38 2.15.2—The Company should include a maximum as well as a current rate for the restoration fee.

Section 3—Switched Access Service

--There are no recommendations for Section 3.

Section 4—Rates and Charges

--There are no recommendations for Section 4.

Section 5—Maximum Rates and Charges

--There are no recommendations for Section 5.

Section 6—Special Contracts, Arrangements, and Construction

--There are no recommendations for Section 6.

Additional Recommendations for Local, Access, and Interexchange Tariffs

- 1) If the Company charges any installation, connection, maintenance, termination, or other charges (in addition to the services listed in the tariff), these additional charges and the descriptions of the charges should be listed in the tariff with their current and maximum rates.
- 2) The Company is applying for Flexible Regulation. Therefore, the Company will include maximum rates as well as current rates for all services within the Local Exchange Tariff and Access Exchange Tariff that are not exclusively ICB.
- 3) The Company should also provide tariffs and tariff revisions to the South Carolina Public Service Commission as well as the South Carolina Office of Regulatory Staff (SC Reg. 103-629).
- 4) The Company is applying for Alternative Regulation. Therefore, the Company will include maximum rates as well as current rates for any *residential* services within the Interexchange Tariff.
- 5) If the Company's Services involve Prepaid Calling Cards, the Company will be required to post a \$5, 000 Surety Bond with the Public Service Commission.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-307-C

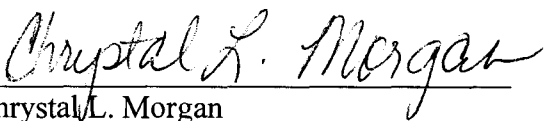
| | | |
|---|---|-----------------------|
| IN RE: |) | |
| Application of Sage Spectrum, LLC for a |) | CERTIFICATE OF |
| Certificate of Public Convenience and Necessity |) | SERVICE |
| To Provide Resold and Facilities-Based Local |) | |
| Exchange, Access, and Interexchange |) | |
| Telecommunication Services in the State of |) | |
| South Carolina and for Flexible and Alternative |) | |
| Regulation |) | |

This is to certify that I, Chrystal L. Morgan, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **SETTLEMENT AGREEMENT** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Margaret M. Fox, Esquire
McNair Law Firm
Post Office Box 11390
Columbia, SC, 29211

M. John Bowen Jr., Esquire
McNair Law Firm, P.A.
Post Office Box 11390
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Bonnie D. Shealy, Esquire
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, SC, 29202



Chrystal L. Morgan

October 1, 2008
Columbia, South Carolina